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: ON :
: PATENT :
AND
TRADE MARK LAW
: OF :
CANADA AND UNITED STATES.

Entered according to the Act of the Parliament of Canada, in the year 1895,
by C. H. Riches, of Toronto, at the Department of Agriculture.

* * *

Toronto, Can. :
CHARLES H. RICHES, SOLICITOR OF PATENTS
46-52 KING STREET WEST, CANADA LIFE BUILDING.

1. I desire to call your attention to the fact, that I devote myself exclusively to the transaction of business for Inventors and Patentees. I have direct agencies and correspondents in almost every country in the world that grants patent and trade-mark protection, and am prepared to attend to all manner of work in this line.

2. I respectfully solicit your orders, and promise you promptness, fidelity and despatch in the transaction of any business that you may entrust to me.

3. RE/SERVICE—My agents have been selected with the utmost care, and are, in every instance, the best and most reliable I have ever been able to find in their respective countries, and I can vouch for the proper and careful treatment of applications that they may prosecute.

4. RE/CHARGES—I believe you will find my charges moderate and satisfactory. I am aware that in some instances my charges are somewhat higher than those I have seen quoted by other agents. They are, however, as low as can be given and the best class of work secured.

CHAS. H. RICHES.

CANADA LIFE BUILDING,

46-52 KING STREET W., TORONTO, CAN.

***Advantages Inventors Have in Procuring Their
Patents Through***

CHAS. H. RICHES.

The location of the Home Office is central, and in addition to the Home Office I have associate offices in Washington, D.C. ; London, England ; Berlin, Germany ; and Melbourne, Australia ; and sub-associate offices at the capital of every country having a patent law.

As my Associates at these agencies are patent solicitors of long standing, high reputation and well known integrity, such a thing as the betrayal of a client's interests has never occurred, and is never likely to occur, and all business and communications intrusted to me or to them are kept secret and confidential.

Consultants.

The staff of consultants in the various branches of art and science are employed when required in order to give my clients the benefit of the best talent in preparing cases.

Records of Patents.

A complete record of all the patents issued from the inception of the Patent Office of the United States in the year 1790 until the present week, also of the Canadian Patent Office, in the year 1824, until the present time, is kept on file at the Home Office, showing the state of the art in any class, for aid in making pre-

liminary examination and in preparing new cases.

This reference library is at the disposal of the inventors, patentees, and all interested in patents or inventions, and can be examined any day during business hours *free of charge*.

Value of a Patent.

In an official report a chief examiner of the Patent Office of the United States says : "A patent, if it is worth anything, when properly managed, is worth and can be easily sold for from \$10,000 to \$50,000."

These remarks apply only to patents of ordinary or minor value. They do not include such as the telegraph, the plaining machine, and the rubber patents, which are worth millions of dollars each. A few cases of the first kind will better illustrate my meaning :

A man obtained a patent for a slight improvement in straw cutters, took the model of invention through the Western States, and after a tour of eight months returned with \$40,000 in cash, or its equivalent.

Another inventor obtained an extension of a patent for a machine to thrash and clean grain, and sold it in about fifteen months for \$60,000.

A third obtained a patent for a printing ink and refused \$50,000 for it, and finally sold it for \$60,000.

These are ordinary values of minor inventions embracing no very considerable inventive power, and requiring no great outlay of money or time to perfect.

Experience shows that the most profitable patents are those which contain very little real invention, and are to an ordinary observer of very little real value.

Danger in Delay.

An inventor should make it imperative to have his application for letters patent prepared and filed as early as possible after he has completed his invention.

I have known instances where an inventor completed his invention and delayed patenting the same for six months, during which period another inventor over twelve hundred miles away conceived the same idea and patented it, and thus completely shut out the first inventor. In this instance two men conceived the same idea about the same time, and whilst one man delayed securing his rights, the other man obtained his Patent of Invention.

When the fact is taken into consideration that there are over 500,000 living inventors on this continent, it will readily be understood that it is possible for several minds to run in the same channel. I have also known of instances where an inventor had perfected his invention and exhibited it to his friends who stole it from him and patented it in their own names.

It will thus be seen that an inventor, by delaying to patent his invention, runs a very great risk of losing it altogether, solely by delay.

Advice as to the Patentability of an Invention.

On making an invention, the first point to be determined is whether it be a proper subject for a patent. To obtain this information, the intending applicant is invited to put the invention fully before me, as freely and clearly as possible, accompanied, if the invention be a mechanical one, by a sketch or model. A careful answer will be forwarded to him, usually by return mail, informing him as to the patentability of the invention—how to protect it and the like—*free of charge*.

How to Obtain a Patent.

Send me a drawing, model or specimen of the invention with a full explanation of the parts claimed as new, accompanied with a post-office order to cover the charges for preparing the application, together with a statement setting forth all the advantages of the invention over similar devices as far as known. The drawings and specifications will then be prepared and the necessary documents will be sent for execution, with full instructions, for signing.

A drawing, showing clearly the minute construction of the invention, is always required in cases where the invention admits of such representation. Upon return of the papers, the application will be filed in the Patent Office where it will receive very careful and assiduous attention in removing any difficulties that may be encountered during the examination, and it is in this particular that the chief labor of the attorney is involved.

Cost of an Application for Letters Patent.

As the cost of a patent varies according to the nature of the invention, it is not possible to herein state definitely what the cost will be, but the probable cost of an application for Letters Patent of Invention for any country will be gladly furnished on application, and the charges will be found to be as moderate as possible, consistent with the care and attention given the application whilst under my control.

As nearly all the fees payable to the Patent Office are positively required by law to be paid in advance, that is, upon making application for any action by the office for which a fee is payable, these Government fees, together with my fees for preparing the application, are required to be paid by the applicant in advance.

As the total cost of an application for Letters Patent is charged the inventor in the first instance, no charges for extras will be demanded, however arduous the labor, except in cases of appeal from the primary examiner when his decision is deemed to be in error, when an estimate of the probable cost of the appeal will be furnished the applicant before entering upon that expense. The best services are rendered for the most moderate fees, and no facilities are claimed at any of the "Patent Offices" other than possessed by other reliable firms.

Preliminary Examination.

A preliminary examination or search should be made in every case, unless the invention should be of such a decidedly novel character as to render such a search useless or unless there is special reason for avoiding this brief delay.

Such an examination consists in a search through the accessible records of the Patent Office to ascertain whether any imitation of the invention desired to be protected can be found. It generally settles conclusively the patentability or non-patentability of an invention; but it sometimes happens that examinations are obstructed by inaccessible descriptions, foreign patents, caveats, or pending applications in the secret archives of the Patent Office.

When ordering a preliminary examination, send me a careful sketch and a brief description of the invention and my fee, when a thorough search will be made and the results of the investigation promptly reported.

Personal Attendance at the Patent Office Unnecessary.

Some inventors very naturally suppose that if personally present at the Patent Office they can get their

cases through more expeditiously, or command more important facilities. But this is not so. The journey to the Patent Office is usually a mere waste of time and money. A reliable attorney must be employed after the inventor reaches there. No one can possibly have facilities other than possessed by all reliable patent solicitors, and any attorney stating that it is possible by personal attendance to have the application rushed through more expeditiously, does so maliciously or for the purpose of obtaining money for travelling expenses from the inventor by fraudulent means.

Attorneys.

On account of the multifarious patents granted and the necessity of making nice and strong distinctions between kindred inventions, great skill and judgment are required in *describing* and *claiming* the thing to be patented so as to secure to the inventor as broad, and at the same time as valid protection as the state of the art will allow.

The following is published by the Commissioner of Patents in the official rules of practice of the United States Patent Office:

As the value of the patent depends largely upon the careful preparation of the specifications and claims, the assistance of *competent counsel* will, in most cases, be of advantage to the applicant; but the value of their services will be proportionate to their *skill* and *honesty*, and too much care cannot be exercised in their selection.

Where establishments are organized for the purpose of procuring patents, they are apt to become more solicitous about the *number* than the *quality* of those which they obtain. This tendency is aggravated by those who solicit patents upon *contingent fees*, or who without special training or qualifications adopt this business as incident to a claim agency, and press for patents as they press for back pay and pensions. Such men are often more desirous of

obtaining a patent of any kind and by any means, than they are of obtaining one which shall be of any value to their clients. Inventors are often poor, uneducated and lacking in legal knowledge. They desire a *cheap solicitor*, and do not know how to choose a good one. They are pleased with the parchment and seal, and are not themselves able to judge of the scope or value of the Grant. *Honest and skilful solicitors*, with a thorough knowledge of the practice of the *Office* and Patent Law, who are able and willing to advise their clients as to the exact value of the patents which they can obtain for them, may be of much service to inventors. There are many such; but those who care for nothing but to give them something called a patent, that they may secure their own fee, have in too many instances, proved a curse. To get rid of their client and of trouble, they have sometimes been content to take less than he was entitled to, while in many cases they have with much self-laudation, presented him with the shadow when the substance was beyond reach. Between such men and the Patent Office the strife is constant. They have the ear of their client, and to some extent of the public, and much of the misrepresentation of the spirit and character of the work of the office is directly traceable to this source.

The drawing up to the specification is an operation which requires the utmost care, skill and attention, for the validity of the patent will depend on this document being clear, explicit and circumstantial. Few inventors will venture to assume a task which is calculated to try the capacity and experience of the most able and professional man.—*Fraser.*

The Supreme Court of the United States, in a recent decision, used the following language:

"The growth of the patent system in the last quarter of a century in this country has reached a stage in its progress where the variety and magnitude of the interests involved require accuracy, precision and care in the preparation of all papers on which the patent is founded."

Renewal of Forfeited Applications.

If from any cause the final fee should not have been paid within the prescribed time, the patent will be withheld, but at any time within two years after the date of *allowance* the application may be renewed on repayment of the Government fee, and necessary charges for that service.

Abandoned Application.

A rejected application which has become "abandoned" by inaction for two years constitutes no bar to a new application, provided the device has not been in public use or on sale for more than two years. The original papers, if applicable, may be used.

Appeal in Case of Rejected Applications.—United States.

It frequently happens that, owing to some misunderstanding or for other reasons, the Examiner rejects an application when there is real merit in the case. Such applications, when entrusted to me, have been prosecuted with almost invariable success after failure in other hands. For an examination and prosecution of a rejected application not prepared by me, send me a statement of the date of filing, if known, a power of attorney, and my fee, which will be stated on application. This fee pays for a thorough investigation and report as to the conditions and prospects of the application; and the prosecution of the case before the Patent Office.

Should an application be finally rejected by a primary examiner, without reason satisfactory to the applicant, an appeal may be taken to the Appeal Board, consisting of three Examiners-in-Chief, on payment of

the Government fee. Such an appeal, if properly conducted, generally effects the desired result. But the presentation and argument of a case before the Board requires great care and experience as well as a thorough knowledge of Patent Law and the state of the Art. In these cases a reasonable fee will be charged, proportionate to the labor involved in fully presenting and prosecuting the appeal

From an adverse decision of the Board, an appeal lies to the Commissioner, on payment of the Government fee, and from the Commissioner to the Supreme Court of the District of Columbia. In each of these actions the fee will be agreed upon by special arrangement, and will always be as low as compatible with thorough professional management.

Interference Proceedings.

This is a judicial proceeding to determine the question of priority of invention between rival applicants.

Whenever an application is made which interferes with any pending application, or with any unexpired patent, notice thereof is given to the applicants, or applicant and patentee, as the case may be; a preliminary interference being declared and a time set by which the interferences shall file concise statements, giving date of the original conception of the invention, of its illustration by drawing or model, of its disclosure to others, of its completion, and of the extent of its use. Hence, inventors should bear in mind the importance of making an early attested record of their discoveries.

After the expiration of the time set for preliminary statements, the Examiner-of-Interferences, if still of the opinion that the applications conflict, declares a full interference. Testimony is then taken by each party, and the case is heard by the Examiner-of-Interference,

from whose decision, if adverse, an appeal may be taken, first, to the Board of Examiners-in-Chief, and from it to the Commissioner. The cost can only be determined on declaration of the Interference.

Disclaimer.

If, after a patent is obtained, it is found that the claims were made so broad as to cover more than the inventor was justly entitled to, such matter may be disclaimed by the owner of the patent.

For disclaimer send the Letters Patent, a statement of the matter to be disclaimed, and the amount of Government fee, and my fee.

Re-Issue.

When a patent is inoperative or invalid by reason of a defective or insufficient specification, or too much or too little being claimed, a re-issue of the patent may be applied for so as to make the necessary corrections.

Before proceeding with an application for re-issue it is advisable to instruct me to make a preliminary investigation in the Patent Office, in relation to the apparent novelty of the invention at the time the patent was granted. For this purpose send me a statement of defects, and my fee. I will then examine the official proceedings in relation to the grant, and the records in regard to novelty, and will then report the probable chance of a re-issue. If it is desired to make application for re-issue, the Government fee should be remitted, when the necessary documents will be prepared and forwarded for inspection and execution. The case is then prosecuted in the same manner as original applications, and upon allowance, is passed to issue without further charge.

Caveats.

Inventors requiring any further time or means for the completion of their inventions, should invariably be protected by a caveat filed in the secret archives of the Patent Office. This entitles the inventor to immediate notice of the filing of a rival application, and is far preferable to the filing of applications for patents on crude inventions of doubtful novelty, to meet with probable rejection, or to serve as finger-posts or beacons to more careful inventors. Only citizens of the United States can file a caveat in the United States Patent Office ; but any one, whether subject or alien, can file a caveat in the Canada Patent Office. A caveat continues in force one year, but may be renewed annually. If it is desired to file a caveat, send me a sketch with a description of the invention and the fee, when the necessary documents will be prepared and forwarded for signature.

Design Patents.

Invention involving ornamental configuration, either in manufactures, sculptures or prints, to be imprinted upon articles of manufacture, may be protected by what is called a Design Patent.

In making application for Design Patents send me a specimen or drawing of the design, and a description setting forth what is new.

Trade Marks.

A Trade Mark is a device used to distinguish the goods of a particular manufacture.

Who May Obtain a Trade Mark?

Any person, firm or corporation, who is entitled to its exclusive use and uses the same in commerce.

For registration of a Trade Mark, send amount of the fee, and prints or unmounted photographs, or a sketch and description, also the following information :

1st. Full name, residence, occupation, place of business, and citizenship, of each applicant or member of a firm.

2nd. The name of firm or corporation, if any. The class of merchandise and the particular description of goods comprised in such class or mode of its application thereto.

Assignments, Agreements, Licenses, &c.

Having had long experience and practice in patent law and the preparation of all papers pertaining to the manufacture, sale, etc., of patents and patent-rights, I am in a position to properly prepare any assignment, agreement, license, etc., which inventors may at any time require.

Copies of Patents.

A printed copy of any United States patents will be furnished by me for twenty-five cents; copy of any Canadian patent will be furnished at the cost of typewriting the specification, and copying the drawings; and the copy of any British patent for one dollar.

In ordering copies of patents send the number of the patent, name of patentee, and title of the invention. If the patentee's name and date of the patent and number of patent are unknown, I will, if desired, carefully search for the patent described in the order. For the time occupied in this search a reasonable charge is made.

Reference Library.

I have a reference library of copies of over 400,000 Letters Patent issued by the U. S. Government, and 35,000 issued by the Government of the Dominion of Canada, which I place gratuitously at the disposal of inventors, the legal profession and all interested in patents.

Decision of the Courts in Patent Suits.

In connection with the above library I have all the decisions of the Supreme, District and Circuit Courts and of the Commissioners of Patents, that have been rendered since the year 1872, which I am pleased to place at the disposal of the legal profession.

The Policy of Patent Grants.

The marvellous instrumentalities by which in almost every department of industry the man of our day is enabled to convert to his use the world's forces, and raw materials of nature, are well known to have reached their most marked development, within comparatively circumscribed limits, both of space and time. These limits have been in a very striking degree conterminous with that system of policy known as "Patent Grants." The recognition of the claims and importance of invention, while of quite modern date, is, nevertheless, eminently proper, resting as it does on a higher order of service than can be alleged as the foundation of title in any mere concrete property, such as lands or chattels. The originator of a useful invention or the author of a book or a great work of art, is, in a sense, a creator, and has added absolutely to the world's resources. *In the march of improvement, inventors and discoverers are*

the vanguard. Without this element, society would stagnate and retrograde.

Admitted that it is expedient that invention be encouraged, the only question is how? No plan, ever yet proposed, approaches the condition of either the practicableness or fairness that the policy of Patent Grants affords, and this is true, in spite of the defects in administration, of a system yet in its infancy. England, which was the first, and for nearly two centuries, the only nation to adopt the principle of systematic protection of inventors, led off very conspicuously in the march of labor-saving improvements, and more recently, our own country, which has for three generations enjoyed a patent code of exceptional liberality, or rather of exceptional *justice* to inventors, *is now confessedly in the van*, and her manufacturers are successfully invading markets that lately counted her among their best customers.

The value of patents has now become so immense that but few manufacturers can afford to be without their protection, and it is a noticeable fact that the leading factories of our country owe their commencement and success to the prestige and protection afforded by the possession of a good and valid patent.

There is certainly no more easy way of making money, no more *royal road* to fortune, than by happy discovery or successful invention, and secure protection of a needed improvement, and it is well worth considering, that instead of there being less room for ingenuity than heretofore, there are constantly opening up entirely new fields for invention, and the value of patent property is becoming more and more appreciated.

An Inventor May Employ Skilled Workmen to Carry out his Invention.

The person in whose mind the idea of the invention is first conceived is the inventor, and if in order to carry his conception into effect it is necessary to employ manual dexterity or even inventive skill in mechanical details and arrangements requisite for carrying out the original conception, the skilled employee will be a mere instrument through which he works his idea, and the employer will be considered the inventor in the full sense of the word. In the suit of "*Bloxem v Elsee*, 11 Car. and P. 567 ; *Dar. Pat. cas. 132.*" "It was objected in this case that parts of the improvements in Foudrinier's paper machine were the inventions of Donkin, who proved that when he made these improvements he was employed as an engineer for the purpose of bringing the machine to perfection and was paid for so doing and that he was acting as the servant of the inventor of the machine for the purpose of suggesting those improvements. He did not discover the principle of the machine nor invent the important improvements on it."

"The patent was not disturbed on that ground."

An Invention Produced from Abandoned Experiments of Others.

Antecedent experiments not brought to completion or conducted to a full result will not affect the patent of a more successful person in the same line, although he avails himself of the knowledge gained by the experiment of his predecessors.

Rights of Employers and Employees.

The doctrine held by the Patent Office is that an inventor, who is an employer, has a right to avail

himself of the mechanical skill of those whom he employs to put his invention into practical form. If the inventor-employer gives general directions to his workmen to produce a certain machine, the combination or parts or arrangements produced belong exclusively to the inventor-employer, and the workman has no patentable right therein. An inventor who may employ a skilled laborer to assist him in carrying out and perfecting his invention, is considered the sole inventor even if in the course of experiments arising from that employment the skilled laborer makes discoveries auxiliary to the plan and preconceived mind of the employer. But where the workman himself suggests and invents an improvement, without previous directions from his employer, the invention belongs to the workman; he can patent it and the employer has no claim thereon, although the device may have been made in the shop of the employer, with his tools and during the time belonging to him.

Executors.

In case of the death of the inventor the patent may be applied for by, and will be issued to his executors and administrators. In case of an assignment of the whole interest in the invention, or of the whole interest in the patent if granted, the patent will issue to the assignee upon the request of the executor or administrator; and if an assignee holds an undivided part interest, the patent will, upon a similar request, issue jointly to him and the inventor, but the assignment or instrument must first have been entered of record. The application and oath must be made by the actual inventor, if alive, even if the patent is issued to a legal representative; but where the inventor is dead the application and oath must be made by his executor or administrator.

What is a Patent?

A patent for an invention is a grant for a specified time to the inventor, or his legal representative, of the exclusive right to make, use and sell the invention claimed in the specification thereto annexed.

Who May Obtain a Patent?

A patent may be obtained by any person who has invented any new and useful art, machine, manufacture or composition of matter, or design, or any new and useful improvement thereon.

Joint inventors are entitled to a joint patent; neither can claim one separately. Independent inventors of distinct and independent improvements in the same machine cannot obtain a joint patent for their separate inventions; nor does the fact that one furnishes the capital and another makes the invention entitle them to make applications as joint inventors; but in such a case they may become joint patentees by a suitable deed of assignment.

Qualities of Invention.

If an alleged invention is absolutely frivolous and foolish, though it may have the element of novelty in one sense, it is not the subject of a patent. So, too, mere colorable variations or slight unimportant changes will not support a patent; as the immersion of cloth in a steam bath with the view of dampening it instead of immersing it in hot water; and the substitution of steam as a means of heating hollow rollers over which wool was to be passed, instead of heating them by the insertion of hot iron bars. In such cases if the consequences resulting from the change are unimportant and the change consists merely in the employment of an obvious substitute, the discovery and application of which could not have involved the exercise of the

inventive faculty in any considerable degree, then the change is treated as merely a colorable variation or a double use, and not as a substantive invention.

The application of an old contrivance to a new use is not patentable. Thus, where a certain kind of wheels had been used on other carriages than railway carriages, Lord Abinger, C.B., held that the plaintiff could not claim a patent merely for the use of such wheels upon railway carriages ; and where a patent claimed as the invention of a patentee, a process of curling palm leaf for mattresses, but it appearing that hair had long been prepared by the same process for the same purpose, it was held to be a mere double use of an old process.

The mere quality of cheapness or other superiority in the material of which an article is made, disconnected with any new or different mode of applying that material in the process of making the thing, has not been held to be the subject of a patent.

It is well settled that a prior experiment will not invalidate an invention subsequently completed by another ; such an experiment must have been brought to a practical completed form, capable of producing some useful result. He is the inventor and is entitled to the patent who has completed the machine and made it capable of useful operation, although others may have previously had the idea and made some experiments towards putting it into practical form. Prior machines, in order to defeat a patent for subsequent machines, must have been working machines, and not mere experiments. They must either have actually done the work or have been capable of doing it.

When a prior foreign patent or a printed publication of prior foreign invention is relied upon to defeat a patent, the description and drawings therein must contain and exhibit a substantial representation of the patented improvement, in such full, clear and exact terms as to enable any person skilled in the art or science to which it appertains to make, construct and practice the invention, to the same practical extent as he would be enabled to do if the invention was derived from a prior patent in this country.

Patent Laws—Canada.

1. No inventor shall be entitled to a patent for his invention in Canada, if a patent therefor in any other country has been in existence in such country for more than twelve months prior to his application for such patent in Canada.

An inventor has 12 months in which to patent his invention in Canada.

2. A patent shall be void if any material allegation in the petition or declaration of the applicant is untrue, or if the specifications and drawings contain more or less than is necessary for obtaining the end for which they purport to be made, when such omission or addition is wilfully made for the purpose of misleading; but if it appears to the Court that such omission or addition was an involuntary error, and if it is proved that the patentee is entitled to the remainder of his patent pro tanto the Court shall render a judgment in accordance with the facts, and shall determine as to costs, and the patent shall be held valid for such part of the invention described as the patentee is so found entitled to.

Impeachment of a patent.

3. Every person, who, without the consent in writing of the patentee, makes, constructs or puts in practice any invention for which a patent has been obtained under this Act or any previous Act, or who procures such invention from any person not authorized by the patentee or his legal representative to make or use it, and who uses it, shall be liable to the patentee or his legal representative in an action for damages for so doing, and the judgment shall be enforced and the damages and costs that are adjudged shall be recovered in like manner as in other cases in the Court in which the action is brought.

Infringement of a patent.

4. Every Canada patent granted under the

Patent Act shall be subject, and be expressed to be subject to the following conditions :

Forfeiture of a patent, for not manufacturing the patented invention.

(a) That such patent and all the rights and privileges thereby granted shall cease and determine, and that the patent shall be null and void at the end of two years from the date thereof, unless the patentee or his legal representative, or his assignee, within that period or any authorized extension thereof commences, and after such commencement continuously carries on in Canada the construction or manufacture of the invention patented, in such a manner that any person desiring to use it may obtain it or cause it to be made for him at a reasonable price at some manufactory or establishment for making or constructing it in Canada.

Forfeiture of a patent for importing the patented invention into Canada.

(b) That, if after the expiration of twelve months from the granting of the patent, or any authorized extension of such period, the patentee or patentees, or any of them, or his or their representatives, or his or their assignee, for the whole or a part of his or their interest in the patent, imports or causes to be imported into Canada the invention for which the patent is granted, such patent shall be void as to the interest of the person or persons importing or causing to be imported as aforesaid.

Exchequer Court to have jurisdiction to decide such questions.

(c) Any question which arises as to whether a patent or any interest therein has or has not become void, may be adjudicated upon by the Exchequer Court of Canada, which Court shall have jurisdiction to decide any such question upon information in the name of the Attorney General of Canada, or at the suit of any person interested.

Barter vs. Smith.

Decisions 37th Section Patent Act.

(d) In the suit of Barter vs. Smith, it was proved that none of the patented machines had been put up in Canada within the time prescribed, and that

there had been some importation after the authorized period, yet the general conclusion arrived at was that the respondent having refused to one the use of his inventions, and that the importation assented to by him to be made being inconsiderable, having inflicted no injury on Canadian manufacturers, having been so countenanced, not in defiance of the law but evidently as a means to create a demand for the said inventions, which the patentee intended to manufacture, and did in fact offer to manufacture in Canada, he has not forfeited his patents.

(e) In the suit of the Tor. Tel. Mfg. v Bell Tel. Co. it was decided that the patentees were bound to license, that is, to sell the use of their invention, and bound to see that their invention was not imported after twelve months, and that it be manufactured in Canada after two years after the issue of the patent, because connivance in an importation is equal to importing or causing to be imported. * * The conclusion is that the patentees, the respondents in this case, or their representatives, having extensively imported the patented articles after the expiration of twelve months from the date of the patent; having not manufactured in Canada the said articles to the extent they were bound to do after two years of the existence of their privilege; having resisted and refused to sell or deliver licenses as required by the Statute to persons willing to pay a reasonable price for the private and free use of the patented invention, they have forfeited their patent.

The Toronto Telephone M'fg Co. vs. The Bell Telephone Co. of Canada.

(f) In the suit of Mitchell v Hancock it was decided that the importation of the invention itself lasted for several years of the existence of a patent until a comparatively recent date, covered a large

Mitchell vs. Hancock.

number of the patented articles, and amounted in the aggregate to a large sum, many thousands of dollars. "It seems hard," says the counsel of the respondent, "after the Company trying for so many years to introduce this invention into the country that the patent should be set aside. It is undoubtedly very hard. If it were a matter of sympathy or sentiment in all probability the patentee would continue to enjoy the privileges to which inventors are so well entitled, but it is a matter of the fulfilment of the obligations and administration of the law, in the case where no legitimate doubt can come to the rescue of a patent. It is therefore decided that the patent has become null and void under provisions of the Patent Act."

Wright vs.
The Bell Tele-
phone Co.

(g) In the suit of Wright v Bell Tel. Co., the patents on the Blake Transmitter, owned by the Blake Telephone Co. of Canada, were declared void for alleged forfeiture on the grounds of importation contrary to the provisions of the Patent Act, and for failure to manufacture the same within the time prescribed.

Every person
acquiring a
patented in-
vention before
the issue of
the patent
shall have the
right to use or
sell it.

5. Every person who, before the issuing of a patent has purchased, constructed or acquired any invention for which a patent is afterwards obtained, under this Act shall have the right of using and vending to others the specific article, machine, manufacture, or composition of matter patented, and so purchased, constructed or acquired, before the issue of the patent therefor, without being liable to the patentee or his legal representatives for so doing, but the patent shall not as regards other persons be held invalid by reason of such purchase, construction, acquisition, or use of the invention, by the person first aforesaid, or by those to whom he has sold the same, unless the same

was purchased, constructed, acquired, or used with the consent or allowance of the inventor thereof, for a longer period than one year before the application for a patent therefor, making the invention one which has become public and in public use, in which case the patent would be void, and the public have the right to use the invention without being liable to the patentee or his legal representatives for so doing.

6. Every patentee shall stamp or engrave on each patented article sold or offered for sale by him the word "Patented" together with the year of the date of the patent applying to such article. Thus, "Patented 1895," or as the case may be; or when from the nature of the article this cannot be done, then by affixing to it or to every package wherein one or more of such articles is or are enclosed, a label marked with a like notice; and any such patentee selling or offering for sale any such patented articles not so marked or not enclosed in a package so marked shall be liable to a penalty not exceeding \$100, and in default of the payment of such penalty, to an imprisonment for a term not exceeding two months, or to both fine and imprisonment.

7. Every person who writes, paints, prints, moulds, casts and engraves, stamps, or otherwise marks upon anything made or sold by him, and for the sole, making or selling of which he is not the patentee, the name or any imitation of the name of any patentee for the sole making or selling of such thing, without the consent of such patentee, or, who, without the consent of the patentee, writes, paints, prints, moulds, casts, carves, engraves, stamps, or otherwise marks upon anything not purchased from the patentee the words "patent,

Every patentee shall stamp or mark the word patented, together with the date of the patent on each patented article.

Every person using the word Patented, etc., on an article not patented, is liable to a fine of \$200 and three months' imprisonment.

letters patent, Queen's patent, patented," or any word or words of like import, with the intent of counterfeiting or imitating the stamp, mark or device of the patentee, or of deceiving the public, and inducing them to believe that the thing in question was made and sold by or with the consent of the patentee or his legal representatives, or who offers for sale as patented any article not patented in Canada, for the purpose of deceiving the public, is guilty of a misdemeanor and liable to a fine not exceeding \$200, or to imprisonment for a term not exceeding three months, or to both.

United States Patent Laws.

Note. Under the Patent Act of the United States there is no obligation on the patentee either to manufacture the invention in the United States within a stated period or to cease the importation of the patented invention into the States after the expiry of any lapse of time. The patentee under the U. S. Patent Act is at liberty to either manufacture or sell the invention or not, as he sees fit, and may, if he so desires, refuse the sale of the patented invention entirely, without affecting the validity of his patent.

What constitutes invention.

9. Any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement thereon, not known or used by others in the United States, and not patented by others, or described in any printed publication in the United States or any country foreign to the United States before his invention or discovery thereof, and not in public use or on sale in the United States for more than two years prior to the application for a patent therefor, unless the

same is proved to be abandoned, may upon payment of the fees required by law and other due proceedings had, obtain a patent therefor.

10. No person shall be debarred from receiving a patent for his invention or discovery nor shall any patent be declared invalid by reason of its having been first patented or caused to be patented in a foreign country, unless the same has been introduced into public use in the United States for more than two years prior to the application. But every patent granted for an invention which has been previously patented in a foreign country shall be so limited as to expire at the same time that the one having the shortest term expires, and in no case shall the United States patent be in force more than seventeen years.

May patent the invention in a foreign country before patenting it in the U.S.

11. Every person who purchases of the inventor or discoverer, or, with his knowledge and consent, constructs any newly invented or discovered machine, or other patentable article, prior to the application by the inventor or discoverer for a patent, or who sells or uses one so constructed, shall have the right to use, and vend to others to be used, the specific thing so made or purchased, without liability therefor.

No liability for using the patented invention prior to the issue of the patent.

12. It shall be the duty of all patentees, and their assigns and legal representatives, and of all persons making or vending any patented article for or under them, to give sufficient notice to the public that the same is patented; either by fixing thereon the word "patented," together with the day and year the patent was granted; or when, from the character of the article, this can be done, by fixing to it, or to the package wherein one or more of them is enclosed, a label containing a like notice; and in any suit for infringement, by the

Must mark the word Patented, together with the day and year on each patented article.

party failing so to mark, no damages shall be recovered by the plaintiff, except on proof that the defendant was duly notified of the infringement, and continued, after such notice, to make, use, or vend the article so patented.

Fraudulent
use of the
name of
patentee.

13. Every person who, in any manner, marks upon anything made, used or sold by him for which he has not obtained a patent, the name or any imitation of the name of any person who has obtained a patent therefor, without the consent of such patentee, or his assigns or legal representatives ; or—

Fraudulent
use of the
word
Patent, etc.

Who, in any manner, marks upon or affixes to any such patented article the word "patent" or "patentee," or the words "letters patent," or any word or words of like import, with intent to imitate or counterfeit the mark or device of the patentee, without having the license or consent of such patentee or his assigns or legal representatives ; or

Wrongfully
uses the word
Patent on an
unpatented
article.

Who, in any manner, marks upon or affixes to any unpatented article the word "patent," or any word importing that the same is patented for the purpose of deceiving the public, shall be liable, for every such offence, to a penalty of not less than one hundred dollars, with costs ; one-half of said penalty to the person who shall sue for the same, and the other to the use of the United States, to be recovered by suit in any district court of the United States within whose jurisdiction such offence may have been committed.

Infringement of a Patent.

14. *Note.* Litigation of this character requires the exercise of most experienced judgment and skill, and I would advise anyone intending to en-

gage in litigation, whether as plaintiff or defendant, to take the precautionary step of having a special investigation made to ascertain what would be the probable issue of a suit based upon the alleged infringement. I am prepared to make these special investigations and assist in the prosecution or defence of suits for infringement of patents in any part of the country.

Patent infringed by making, using or selling.

15. There are three ways in which a patent may be infringed. First, by making the patented article or working the patented process ; second, by using the patented article, and third, by selling the patented article.

Infringement to make for use or sale.

16. When a machine is the subject of a patent, the patent covers both the machine itself, and the mode or process of making it. The Statute vests in the patentee the exclusive right of making it, the exclusive right of using it, and the exclusive right of selling it to others to be used. It is, therefore, an infringement to make a patented machine for use or for sale, though in fact it is neither used nor sold. It is an infringement to use it, though made by another, and it is an infringement to sell it, whether made by oneself or by another, because the Statute vests the exclusive right of doing all these things in the patentee.

17. As to the sale of a patented machine, in order to be an infringement of the patent it must be something more than a sale of the materials, either separate or combined. It must be a sale of a complete machine for use as a machine which is patented, in order to render the vendor liable for an infringement of the patent by a sale.

18. Where the subject of a patent is a machine, the using it is altogether prohibited by the Statute, because it intends to vest in the patentee the full

enjoyment of the fruits of his invention both in the practice of making the machine and of producing the effect or result intended to be produced by it.

19. Where an order was given to the defendants by a third person to manufacture a patented article on a model furnished by him and the order was executed, it was held that the defendants were guilty of an infringement, although when they began to execute the order they had no knowledge of the plaintiff's patent.

Product of a patented machine or process.

20. The sale of the articles produced by a patented machine or by a process which is patented, is not an infringement, unless the product of the machine or process is protected by a separate patent, or by a claim or claims in the patent protecting the machine or process.

Infringement of a manufacture or composition of matter.

21. As to a manufacture or composition of matter. Assuming that the word is used in our Statute to describe the vendible and tangible product of any branch of industry, a patent for a manufacture will be infringed by the same acts as a patent for a composition of matter, that is, by making, using, or selling the thing itself, or by importing it from a foreign country where it has been made.

Scope of a patent on a composition of matter.

22. Whether the using or vending of a patented composition is a violation of the right of the proprietor can be considered to extend to every form of use, so as to give the proprietor the right to maintain an action, is worthy of consideration. If a patented medicine is made by one not authorized to make it and is sold to a person who consumes it, it would be a somewhat inconvenient result upon the public to hold that the latter is to be considered as using the invention in the sense of the Statute. He cannot know that the article

In
of
p

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Infringement
of an art or
process.

is not made by the true proprietor. The probability is that he intends to purchase the genuine composition, and that he is deceived into supposing that he has purchased it ; still, in strictness he may be liable to an action for using the thing itself by consuming it.

23. An Art :—Where an art is the subject matter of a patent, the patent will be infringed by exercising or practising the same art, which will constitute the using of the invention or discovery. It may, however, be doubted whether the mere using of the art or process, especially for a different purpose and that rejection of the valuable result of that purpose, is to be considered an infringement. Thus, in a recent English case the patent stated that the invention consisted in the use and application of a certain chemical agent for the purpose of precipitating the solid, animal and vegetable matter contained in sewerage water. The Board of Health used the process for the purpose of disinfecting and deodorizing sewerage water, whereby the same precipitated all animal and vegetable matter, which was not, however, used, but rejected as an accidental result. The Court of Queen's Bench held that there was no evidence of an infringement.

Infringement
of machines.

24. An infringement involves substantial identity, whether that identity is described by the same terms, same principle or same *modus operandi*. If the invention of the patentee be a machine it will be infringed by a machine which incorporates in its structure and operation the substance of the invention, but if the difference between the two machines is not a mere difference of form, if there is a material alteration in the construction, if they are substantially different combinations of mech-

anism to effect the same purpose by means which are not really the same in substance, then the one will not be an infringement of the other.

25. A patent for a combination of several elements is not infringed by a combination which dispenses with one of the elements and accomplishes the same result or a new result by the use of the remaining elements, nor is a patent for several elements infringed by a combination which dispenses with one of the elements and substitutes therefor an element substantially different in construction and operation, but serving the same purpose as the omitted element.

Infringement of a claim avoided by the omission of a single element of the claim.

26. But in cases where the patent is not for a combination, if the principle is applied in the same way that the patentee has applied it, then the absence of two or three elements in the defendant's machine, which are mentioned in the specification, will not prevent the patentee from recovering for an infringement.

Infringement of a claim covering a principle.

27. Every patent stands upon its subject matter, and, accordingly, the subject of infringement depends upon the use of that which is covered by the patent. Where a patent is for the combination alone it is no infringement to use any of the parts or things which go to make up the combination, provided the combination itself be not used.

Every patent stands on its own subject matter.

28. In the case of a process where the object to be accomplished is open to the public, notwithstanding the patent, provided it can be accomplished by several modes, which as processes are substantially different, an infringement must be in respect to the processes used by the patentee. But unless it appears that the article itself could be produced by another process constituting an

Infringement of a process.

independant discovery, then an infringement may be proved by the making of the article. Or to state in other words, when the invention or subject matter of the patent is entirely a new manufacture it is immaterial by what process it is produced since the infringement must consist in making the same thing, whether by one process or another. But where the invention or subject matter is the process of making a particular thing which may be made by more than one process, the inquiry will be whether it has been made by the use of the process covered by the patent.

Patent for
distinct im-
provements.

29. Where a patent is for several distinct improvements or things and does not stand upon the combination of such things, when the use of any one of them will be an infringement.

A patent not
infringed
when not in
existence

30. A patent cannot be infringed by anything done when the patent did not exist, and, therefore, it is no infringement to make or use a machine subsequently patented or otherwise practice the invention before the patent is obtained, which is afterwards made the subject of a patent. But when a patent is granted, the right in the subject matter relates back to the time of the invention, so that the party who has practiced the invention between the time of the discovery and the issuing of a patent must cease to do so. Any acts of infringement done after the issuing of the patent will be ground for the recovery of damages, although the previous acts were done at a time when it was uncertain whether there would be any patent issued.

Action
infringement
may be
brought by
the patentee.

31. An action for infringement may be properly brought by the patentee on behalf of himself, or on behalf of anyone to whom he has granted

an exclusive license, and who has been damaged by the infringement.

32. Where the patentee has assigned his whole interest, either before or after the patent was taken out, the action can only be brought in the name of the assignee, but where the assignment is of an undivided part of the interest, the action should be brought in the joint names of the patentee and the assignee, as representing the whole interest.

Law of Trade Marks.

The general principle upon which the Courts exercise jurisdiction in the case of trade marks is, that a manufacturer who produces an article of merchandise which he announces as one of public utility, and who places on it a mark by which it is distinguished from all other articles of a similar kind, with the intention that it may be known to be of his manufacture, becomes the exclusive owner of that which is henceforth called his trade mark. By the law of this country he obtains a property in the mark which he so affixes to his goods, and the property thus acquired by the manufacturer, like all other property, is under the protection of the law, and for the in-

vasion of the right of the owner of such property, the law affords a remedy similar in all respects to that by which the possession and enjoyment of all property is secured to the owners.

Where, therefore, a manufacturer has been in the habit of stamping the goods that he has manufactured with a particular mark or brand, so that persons purchasing goods of that description know them to be of his manufacture, no other manufacturer has a right to adopt the same stamp.

When once a person has acquired a right in a trade mark any infringement of that right will form ground for the interference of the Court. For the Court to interfere there must be fraud, for where there is no fraud there is no wrong to be redressed and no remedy applicable. But it is not necessary that there should be fraud in the sense that the infringer knowingly and willfully makes a fraudulent attempt to appropriate to himself the fruits of another's reputation ; if he acts so that custom intended for another is diverted to himself, and that the public buy and pay for one thing while intending to buy and pay for another, so that both vendor and purchaser are injured, there is fraud, and the intention of the infringer is unimportant.

Infringement under our law is criminally punishable.

It is not everything that can be marked on goods that will constitute a valid trade mark. A mere descriptive adjective, for instance, cannot be appropriated from the rest of the world. It is necessary, therefore, to distinguish true trade marks from other marks, which, though affixed to goods, yet cannot be claimed as the exclusive trade marks of any individual.

For the purposes of the Trade Mark Act a trade mark must consist of or contain at least one of the following essential particulars :

(a) A name of an individual or firm printed, impressed or woven in some particular and descriptive manner, or

(b) A written signature or copy of a written signature of the individual or firm applying for the registration thereof as a trade mark, or

(c) A descriptive device, mark, brand, heading, label or ticket, or

(d) An invented word or invented words, or

(e) A word or words having no reference to the character or quality of the goods, or not being a geographical name.

The important feature which is absolutely necessary in all the varieties of trade marks is that of distinctiveness. Each mark must be such that if the question of infringement arises it shall be perfectly clear what it is that is being infringed, and that this something is quite different from all other marks used upon the same class of goods.

The portrait of a person whose name has become descriptive of the goods, is not sufficiently descriptive to be registered as a good trade mark, but the portrait of a public character has been allowed to be registered in America.

A word which was first applied to or was even invented for the sale and express purpose of designating a substance or composition may prove, on investigation, to have ceased to retain the characteristic which it once possessed of conveying the idea of the goods being of a particular manufacture, in which case the person who first used the word, although its inventor will cease to have any exclusive rights in it since it will have become purely descriptive of an article which all may freely make.

Infringement of Trade Marks.

When an action has been commenced having for its object the restraint of an unfair competition in trade, carried on by means of an employment by the defendant of a trade mark identical, or nearly identical, with the plaintiff's, there must be established, in order for the action to be successful, the existence of the trade mark, the plaintiff's exclusive right therein, the fact of an imitation, and the absence of license or acquiescence on the part of the plaintiff.

Assuming then the validity of the trade mark and the rights of the plaintiff therein to be established, the next and most important point for the plaintiff to prove is the fact of infringement. The plaintiff has no right to say that the defendant shall not sell exactly the same article, better or worse, or an article looking exactly like his own unpatented article, but he has a right to say that the defendant shall not sell such article in such a way as to steal (so to call it) the plaintiff's trade mark, and make purchasers believe that it is the manufacture to which that trade mark was originally applied. In the language of common law the defendant has no right to sell his goods as and for those of the plaintiff.

The natural consequence of marking goods so as to cause them to appear the same in the market as those of a well-known firm is to deceive the ultimate purchaser, and such deception will be restrained even though the original purchaser is not deceived. No man is entitled to represent his goods as being the goods of another man, and no man is permitted to use any mark, sign or sample, device or other means whereby without making a direct false representation himself to a purchaser who purchases from him, but enables such purchaser to tell a lie, or make a false representation to somebody else, who is the ultimate customer. If a man

does that, the natural consequence of which is to enable that other person to deceive, and pass off his goods as somebody else's, for that he is answerable, and the same principle of preventing that which would deceive the ultimate purchaser is observed where the probability of deception arises, not from the imitation of a trade mark proper, but from copying the peculiar get-up of the plaintiff's goods, or from some similar act.

The infringement of a trade mark may consist in the adoption of the essential part of the plaintiff's trade mark by the defendant, and where there is no imitation of the essential part, a resemblance in particulars common to the trade does not constitute an infringement. But, on the other hand, the infringement may consist in the imitation of the general appearance of the plaintiff's mark, and where both trade marks are of composite character, it is possible that though no one particular mark has been exactly imitated, or the principal mark which has been reproduced cannot for some reason or other be protected as a trade mark, the combination may be very similar and likely to deceive, and will, therefore, be restrained by injunction. For the purpose of establishing a case of infringement it is not necessary to show that there has been the use of a mark in all respects corresponding with that which another person has acquired an exclusive right to use. If the resemblance is such as not only to show an intention to deceive, but also such as to be likely to make unwary purchasers suppose that they are purchasing the article sold by the party to whom the right to use the trade mark belongs. It is seldom that the mark employed by the infringer does correspond in all respects with that of the person whose rights he is attacking; the usual practice is to introduce some colorable variation.

Where a manufacturer has been in the habit of packing or getting up his goods in a peculiar and distinctive

manner, he will be entitled to restrain another from imitating his packages, even though his actual trade mark is bad ; and the imitation of bottles or barrels of a peculiar design, such as is only used by a manufacturer, will afford presumption that fraud is intended. There may be no monopoly at all in individual things, but if they are so combined by the defendants as to pass off their goods as the plaintiff's, then the defendants have brought themselves within the old common law doctrine, in respect of which equity will give to the aggrieved party an injunction to restrain the defendants passing off their goods as those of the plaintiff.

It has been held in America that a label on which is a representation of a box filled with cakes of soap, wrapped in variously colored paper wrappers, and arranged in a particular way, is not infringed by offering for sale boxes containing cakes of soap so wrapped and arranged.

Criminal Prosecution Under the Trade Mark Act.

Notes. The expression, "trade mark," means a trade mark or industrial design, registered in accordance with the Trade Mark and Design Act, and the registration whereof is in force under the provisions of the said Act, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign state, to which the provisions of section 103 of the Act of the United Kingdom, known as the Patents, Designs and Trade Marks Act, 1883, are in accordance with the provisions of the said Act for the time being applicable.

(2) A person shall be deemed to forge a trade mark who either

(a) Without the assent of the proprietor of the trade mark makes that trade mark, or a mark so resembling that trade mark, as to be calculated to deceive, or

(b) Who falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise, and any trade mark or mark so made or falsified is under the Trade Mark Act referred to as a forged trade mark.

(3) A person shall be deemed to apply a trade mark or mark or trade description to goods, who

(a) Applies it to the goods themselves, or, who applies it to any covering, label, or other thing in, or with which the goods are sold or exposed, or had in possession for any purpose of sale, trade or manufacture, or,

(c) Who places, encloses, or annexes any goods which are sold or exposed, or had in possession for any purpose of sale, trade, or manufacture, in with or to any covering, label, or other thing to which a trade mark or trade description has been applied, or

(d) Who uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

(4) Every person guilty of an offence under the Trade Mark Act is liable

(a) On conviction, on indictment to imprisonment, with or without hard labor, for a term not exceeding two years, or to a fine, or to both imprisonment and fine, and

(b) On summary conviction to imprisonment, with or without hard labor, for a term not exceeding four months, or to a fine not exceeding \$100, and in case of a second or subsequent conviction, to imprisonment, with or without hard labor, for a term not exceeding six months, or to a fine not exceeding \$250. (c) In any case, every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed, shall be forfeited.

(5) No prosecution under the Trade Mark Act shall be commenced after the expiration of three years, next after the committing of the offence, or after one year next after the first discovery thereof by the prosecutor, which ever expiration first happens.

(6) Every person who falsely represents that any goods are made by a person holding a Royal Warrant or for the service of Her Majesty or any of the Royal family, or any Government Department of the United Kingdom or of Canada, is liable to summary conviction to a penalty not exceeding \$100.

Civil Remedy.

The proper remedy at Common Law for fraud, committed by means of the infringement of a trade mark belonging to a rival trader, is by an action on the case for deceit. The manner in which that form of action was made applicable to cases of trade mark, and developed to meet the interests of such cases, are in some respects different from other cases of fraudulent misrepresentation, may be well stated in the language employed by Mr. Justice Mellish, who says: "In my opinion all actions of this kind must be founded upon false representations. Originally, I apprehended the right to bring an action in respect of the improper use of a trade mark arose out of the Common Law right to bring an action for a false representation, which, of course, must be a false representation made fraudulently. It differed from an ordinary action for false representation in this respect, that an action for false representation is generally brought by the person to whom the false representation is made, but in the case of the improper use of a trade mark the Common Law Courts noticed that the false representation which is made by putting another man's trade mark, or the trade name of another manufacturer on the goods which the wrongdoer sells, is calculated to do an injury, not only to the

person to whom the false or fraudulent representation is made, but to the manufacturer whose trade mark is imitated, and, therefore, the Common Law Courts held that such a manufacturer had a right of action for the improper use of his trade mark. Then the Common Law Courts extended that doctrine one step further ; first, if I recollect rightly, in the case of *Sykes v Sykes*. There it was held that although the representation was perfectly true as between the original vendor and the original purchaser, in this sense, that the original purchaser knew perfectly well who was the real manufacturer of the goods, and, therefore, was not deceived into believing that he had bought goods manufactured by another person ; yet if the trade mark was put on the goods for the purpose of enabling that purchaser, when he came to re-sell the goods, to deceive any one of the public into thinking that he was purchasing the goods of the manufacturer to whom the trade mark properly belonged, then that was equally a deception, a selling of goods with the false representation which would give the original user of the trade mark a right of action. That was the Common Law right."

An action on the case for deceit at Common Law may then be brought, not only by the person who has been induced to purchase goods manufactured by one maker in the faith that they had been manufactured by another, but also the maker of whose manufacture the goods in question have falsely been represented to be.

In *Walker v Alley* it was decided that the name and sign of the Golden Lion was so connected with the plaintiff's dry goods business that it could not be taken by another trader, and the Chancellor of Upper Canada said that where it is clear to the Court that the defendant himself thought the use of it was calculated to advertise him at the expense of the plaintiff, and this was his object in using it, and where such has been the

effect of the user, I think that the Court should say to him, "Remove that sign, its use by you may, as you intend, damage the plaintiff. It cannot be necessary or valuable to you for any other purpose. You have your choice of many signs which, as a mere attraction, or to give your store a marked designation, must answer a fair business purpose equally well."

List of Countries.

The following is a list of the principal countries of the world in which an invention is patentable.

Argentine Republic.	Luxembourg.
Austria.	Malta.
Bahama Islands.	Mauritius.
Barbados.	Mexico.
Belgium.	Natal.
Bolivia.	Newfoundland.
Brazil.	New South Wales.
British Bechuanaland.	New Zealand.
British Guinea.	Norway.
British Honduras.	Orange Free State.
British North Borneo.	Peru.
Canada.	Portugal.
Cape Colony.	Queensland.
Ceylon.	Russia.
Chili.	St. Helena.
Congo Free State.	South African Republic.
Denmark.	South Australia.
Ecuador.	Spain.
Fiji Islands.	Strait's Settlements.
Finland.	Sweden.
France.	Switzerland.
Germany.	Tasmania.
Great Britain.	Trinidad.
Guatemala.	Tunis.
Hawaii.	Turkey.
Hong Kong.	United States.
Hungary.	Uruguay.
India.	Venezuela.
Italy.	Victoria.
Jamacia.	Western Australia.
Leeward Islands.	Zululand.
Liberia.	

INDEX.

Advantages of Inventors	3
Advice as to Patentability.....	5
Attorneys	8
Abandoned Application.....	10
Appeal.....	10
Assignments	14
Agreements	14
Consultants.....	3
Cost of a Patent.....	6
Caveats.....	13
Copies of Patents.....	14
Canada Patent Laws.....	21
Criminal Prosecution.....	39
Civil Remedy.....	41
Danger in Delay.....	5
Disclaimer.....	12
Design Patents.....	13
Decisions of the Courts.....	15
Decisions 37th Section Patent Act.....	22
Experiments Abandoned.....	17
Employers, Rights of.....	17
Employees, Rights of.....	17
Executors.....	18
How to Obtain a Patent.....	6
Interference Proceedings.....	11
Infringement of a Patent.....	28
Infringement of Trade Marks.....	37
Licenses	14
Law of Trade Marks.....	34
List of Countries.....	43
Preliminary Examination.....	7
Personal Attendance.....	7
Policy of Patent Grants.....	15
Qualities of Invention.....	19
Records of Patents.....	3
Renewal of Application.....	10
Re-Issue	12
Reference Library	15
Skilled Workmen.....	17
Trade Marks.....	13
United States Patent Laws.....	26
Value of a Patent.....	4
Who May Obtain a Trade Mark.....	13
What is a Patent?.....	19
Who May Obtain a Patent.....	19

